
From: Timothy Becker [mailto:tbecker@johnsonbecker.com]
Sent: Tuesday, October 16, 2012 5:15 PM
To: Yeager, Joseph H.
Subject: Re: Zimmer Trial Plan

Accepted.

1. 2/2
2. Med Authos - 10/29
3. PFS to defs 11/2

Tim

From: Yeager, Joseph H. [mailto:jay.yeager@FaegreBD.com]
Sent: Tuesday, October 16, 2012 04:07 PM
To: Timothy Becker
Subject: RE: Zimmer Trial Plan

We need the lead time for the authorizations - it's only fair. 10/29 is squeezing us as it is. The work on your side is on the PFSs, those can wait until the week of the 5th.

From: Timothy Becker [mailto:tbecker@johnsonbecker.com]
Sent: Tuesday, October 16, 2012 4:59 PM
To: Yeager, Joseph H.
Subject: RE: Zimmer Trial Plan

Spoke to soon. Consensus on my side is November 2 for PFS and Authos. Rationale is that it is a Friday. I can't imagine the additional four business days is that prejudicial to you. If it is, we can have a gentlemen's agreement to extend the discovery schedule for you four days if you need the time.

We can live with w/w on unrevised picks.

Tim

From: Yeager, Joseph H. [mailto:jay.yeager@FaegreBD.com]
Sent: Tuesday, October 16, 2012 3:32 PM
To: Timothy Becker
Subject: RE: Zimmer Trial Plan

OK:

1. To answer your question, by unrevised we mean no subsequent surgery.
2. On a cutoff for PFS and complete authorizations for possible case pool picks, we can split the difference (10/22 v. 12/5) and agree on 10/29. Any later means we will not have any med records until well after Thanksgiving, putting us way behind.
3. Assuming you can live with the compromise date in (2) above, we can live with your proposal of 2 unrevised picks for each side.

Let me know.

Thanks.

Jay

From: Timothy Becker [<mailto:tbecker@johnsonbecker.com>]
Sent: Tuesday, October 16, 2012 2:58 PM
To: Yeager, Joseph H.
Subject: RE: Zimmer Trial Plan

Can you give me a heads-up of where you are at? I am travelling the next two days and need to know whether or not to start drafting the brief. Neither of these are complex issues, and as I said in my last email, this is literally the best I can do.

I am happy to hear you out if you have a problem with these. But, I suspect the Court will follow her well established precedent and find the most reasonable position to resolve these issue. I think our view reflects a compromise that meets that standard. Let me know. Thanks, Tim

From: Yeager, Joseph H. [<mailto:jay.yeager@FaegreBD.com>]
Sent: Tuesday, October 16, 2012 1:51 PM
To: Timothy Becker
Subject: RE: Zimmer Trial Plan

OK, call my office, 9 am central tomorrow.

Thanks.

From: Timothy Becker [<mailto:tbecker@johnsonbecker.com>]
Sent: Tuesday, October 16, 2012 2:50 PM
To: Yeager, Joseph H.
Subject: RE: Zimmer Trial Plan

Can we do 9? I have to catch a plane at 10:00?

From: Yeager, Joseph H. [<mailto:jay.yeager@FaegreBD.com>]
Sent: Tuesday, October 16, 2012 1:49 PM
To: Timothy Becker
Subject: RE: Zimmer Trial Plan

How about 0930 Central tomorrow?

From: Timothy Becker [<mailto:tbecker@johnsonbecker.com>]
Sent: Tuesday, October 16, 2012 2:11 PM
To: Yeager, Joseph H.
Subject: RE: Zimmer Trial Plan

Later better.

From: Yeager, Joseph H. [<mailto:jay.yeager@FaegreBD.com>]
Sent: Tuesday, October 16, 2012 12:23 PM
To: Timothy Becker
Subject: RE: Zimmer Trial Plan

Thanks Tim, I should be in a position to respond this afternoon. Can you talk later today or should we plan a call in the morning?

From: Timothy Becker [<mailto:tbecker@johnsonbecker.com>]
Sent: Tuesday, October 16, 2012 1:04 PM
To: Yeager, Joseph H.
Subject: Zimmer Trial Plan

Jay:

I tried to call you earlier today to discuss. As promised, I wanted to supply our position to you as soon as practical. I am pretty booked today, but have some time between now and 1:00 if that works for you. If not, I am available to talk Wednesday morning up until 10:30 CST when I need to board a plane.

After conferring with my co-counsel, our position is as follows:

1. **Unrevised case selection:** I reviewed the transcript from the most recent Status Conference. In the transcript, I told the Court that we (Plaintiffs) intended to pick one unrevised case. In turn, you indicated that Defendants wanted to pick more. The Court's position was that the number of unrevised picks should be proportional to the number of unrevised cases. At the hearing, Andrea represented to J. Pallmeyer that 212 of the roughly 700 cases were unrevised (we use merely to illustrate a point; we have no confirmation regarding the accuracy of this number. We ask that you please provide the basis for your calculation. How one calculates revised versus unrevised is important. For example, if your methodology is to count a case as unrevised unless there is a total revision, that would impact the numbers in an upward departure. We note this only because our informal survey of the numbers suggest there are far less than 212 revisions). That observation aside, and assuming for the purpose of this discussion that your revision number is accurate, it means that roughly 30 percent of the MDL is made up of unrevised cases. 30 percent times 12 cases equates to 3.6 cases. We believe our number of 1 for plaintiff and 2 for defendant reflects this proportional representation and is fair. However, in an effort to resolve this impasse, we propose that if Zimmer is going to insist to the Court that 4 of the 12 cases should be unrevised cases, then the distribution should be as follows: 2 unrevised cases for Plaintiff and 2 for Defendant.
2. **Case Selection Date:** Given we never negotiated this issue, and the Court will likely not decide the question until mid-November, we propose the following: The deadline for inclusion of a case in the representative trial process shall be any case where Defendants received a PFS and medical authorizations by November 5, 2012.

This is effectively our "last best" offer. If it is unacceptable, we will need to submit the issue to the Court. My understanding is that we will file simultaneous briefs on or before October 18, 2012. Additionally, after conferring with my co-counsel, and given the import of issue two to both sides, we intend to request oral argument on the Court's regular motion calendar.

Let me know if this is acceptable. Our view is that this reflects a fair compromise. If you would like to discuss further, I am around as set forth above.

Thanks, Tim

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